App. F. IX-4

Previous References

1931 .32
(Law)

File No. 53-31

Serial Nos. 1 – 4

Later References

(14)

General and Revenue Secretariat.

Serial Nos. Form

Part B for October 1931

SUBJECT.

Liability to be incurred for damage of goods in Invoice No. 10 of 7-8-31. ex Byculla to Mysore – 126 bags wheat flour

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4) To The Traffic Manager Mys Rys

No. P1913 of 3-10-31

Informs that the Ry Administration is not bound to survey the bags and asses the damages at the instance of the Consignee and that action may be taken under Sec 40 of the Ry Regulⁿ if after due notice delivery is not taken by the party

Dr. Rao
29-10-31

App. F. III—2]

General and Revenue Secretariat — File No. 53 of 1931

Serial No.

Letr No. C.T. 557/31 dated 8th sept 1931 from the Traffic Manager, Mys. Rys. soliciting opinion in the matter of liability to be incurred for damage of goods in Invr. No. 10 of 7.8.31 Ex: Byculla to Mysore.

1) Consignment is said to have be received at Mysore in crate. tight wagons and is booked at owner's risk under risk note A & B. the Consignee has refused to take delivery 51 bags on plea of damage.

Subd for opinion

TSD 18/9

2) Please ask the Tr. Manager to send the records connected with this case containing the risk note so that exact facts may be ascertained & legal opinion given thereon

DSL 22/9

DSL is put up accordingly

TSD 22/9

DSL

DS/9

To

The Tr. Manager, Mys. Rys.

No. P. 1773 d 22.9.31. Calling for the records Connected with the Case.

Sun A

TSD 23/9

NOTE – Contd. Sheet

TYPING SECTION 22 SEP. 1931 GENL. & REV. SECTT.

WD 02553—50,000—GPB—8-7 30

7

File No. of 193 | General and Revenue Secretariat

Letr no C 1 517/31 dated 26th Sept 1931 forwarding the file of papers enclosed in her Case.

1) Rules guiding the risk note 'A' & 'B' are not traceable in the records seen

TSD
30/9

2) The facts are shortly that certain foods sent under risk notes 'A' & 'B' have been refused to be taken delivery of at Mysore by the Consignee on account of some alleged damages. The consignee insists on the Railway making a survey of the damage before he takes delivery of the foods and the question is whether under these circumstances the Railway Adm is bound to make a survey & have the damages assessed or ~~Can~~ whether they are at liberty to dispose of the foods under sec 40 of the Ry Regn, if delivery is not taken by the Consignee within a reasonable time after due notice is given under the section.

3) There appears to be nothing either in the Railway Regn or the rules made thereunder requiring the Ry Adm to make surveys or to

Serial No.

have the damages assessed in such cases. It has been held in 1926 Lah 512 and in 1926 Lah 575 that where the property in the goods sent by rail vests in the Consignee, he is not entitled to refuse to take delivery of goods on the ground of their being damaged. His proper remedy is to claim compensation.

(6) The Case of Ganga Ji Woon Mills Co v E.I. Ry reported in 1922 All 514 is a direct authority on the question raised in ~~this~~ the present instance. There, the plaintiff company sent their men to the Ry station and after discovery that the bales of cotton were wet and damaged, "refused to take delivery without an inspection and a note as to the condition of the goods by the Railway Servants." It was held that a consignee has no right to demand that the goods shall be opened & inspected on the Railway premises before he can be called upon to take delivery. As observed by Lindsay J. "there is no provision of law or any Statutory rule which obliges a Railway Company to make or to allow to be made in its delivery register any note alleging that goods are in a damaged condition." A plaintiff cannot refuse to take deliver

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

because the Railway Company refuses to make such an entry in their books.

7) This case has been followed recently in Lahore (1928 Lah 166), where it has been held that the refusal of the Railway authorities to reweigh goods or note the condition or weight in their registers at the time of delivery gives no cause of action to a consignee and if he refuses to take delivery, he cannot complain of ~~that~~ the sale of goods held under Sec 56 of the Ry: Act, corresponding to sec 40 of the Mysore Ry Regn. In this Lahore case, the goods were sent under Risk note 'A' and it was observed that it was primafacie evidence of defective packing and that in ~~any~~ the absence of any other explanation, it must be held that the goods were damaged during transit owing to defective packing, the loss of which was covered by the risk note. (Cf 1931. 131 I.C. 31 cal.)

8) In the present instance moreover there is in addition Risk note 'B', under which for damage or deterioration, the Railway Admn is completely protected. It is only in

14-3-31

App. F. III—2]

General and Revenue Secretariat | File No. | of 193

Serial No.

Case of non-delivery that the Railway must give evidence as to their ~~dea~~ dealing with the goods. (A.I.R 1931 Patna 201) and in all other cases, it is the plaintiff that was to prove ~~that~~ both the damage and the ~~wil~~ wilful neglect or misconduct of the Railway before he can recover compensation.

9) Under these circs the claim of the party is unsustainable and the Railways can take action under Sec 40 of the Regn if after due notice delivery is not taken by the party.

10) If approved, the Traffic Manager, will be informed accordingly.

Gen Secy 3/9

11) The Govt Advocate may also be consulted as to

L.O. No. P. 3431 dated 1/10/1931 1/10

12) Forwarded with compliments to the Government Advocate for favour of opinion

M Jagadeesan
for Gen: Secy to Govt
1/10

GENERAL SECRETARY.
1 OCT. 1931
No. 2487

Judl 810/31-32
dy 1.10.1931

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

File No. of 193

General and Revenue Secretariat

Returned with compliments.

(13) The position is correctly summarised in the note of the Assistant Secretary dated 30-9-1931.

(14) The Railway Administration is not bound to 'survey the bags and assess the damages' at the instance of the Consignee as prayed for by him in his letter dated 27th August 1931. (c.f. A.I.R. 1928 Lahore 166 at p.169 and A.I.R. 1922 Allahabad 514.) If, because the Railway Administration refuses to make a 'Survey' as desired, the Consignee refuses to take delivery of the goods, the former are entitled to dispose of the goods under Sec.40 of the Railway Regulation.

S. Rangaswami Iyer

Government Advocate.
2/10/1931.

Dft reply accordingly
MG
2/10

Dft Sub: for appt.
SD
3/10

In view of what is stated by the Govt Advocate in para 13 supra, it is proposed to send a copy of the opinion expressed in paras 4 to 9 supra—

Gen Secy)

MG
3/10

No. Dy. 44/Q/31-32
dt. 2.10.1931

GENERAL SECRETARIAT
2 OCT. 1931
No.

Gen Secy is in a meeting.
- Issue today

12 884/31 T. 34A.

MRM T 239-2400-27-2.30

MYSORE RAILWAYS

Loan 53-31-1

No. C.F. 551/31.

TRAFFIC MANAGER'S OFFICE,

Mysore, 8th September 1931.

To

GENERAL SECRETARIAT 10 SEP 1931 No. 1041

The Secretary to Government
in charge of the Law Section
of the Secretariat, Bangalore.

Dear Sir,

Re. Inv. No. 10 of 7/8/1931 ex Byculla to Mysore.
126 bags wheat flour.

With reference to the above consignment, I beg to state that 60 bags due to the above consignment were received at Mysore from Ghorpuri station; out of this 26 bags have been reported as wet and damaged by water and dried. The remaining 66 bags were received from Harihar; out of which 28 are reported damaged. 51 bags out of the above consignment have been refused by the consignee on plea of damage. The consignment under reference was received at Mysore in water tight wagons and is booked at owner's risk under risk notes "A" and "B" "A" for insecurely sewn and "B" for special reduced rates from Bombay to Mysore via Poona and Arsikere. We issued a registered notice to the consignee that the Railway is not responsible in any way for the damage as there was no misconduct on their part as bags were received in water tight wagon on this Railway and as such, there was no necessity for any survey to be made as no claim will be paid under the conditions of booking and he was told to remove the bags at once informing him that if the bags are not removed within a fortnight, they will be disposed of at his risk as per Section 40 of the Mysore Railways Regulation, in which case he will be entitled only for the sale proceeds less all charges due to the Railway. He now writes to me that he cannot remove the bags without a "survey" of the damaged bags and awaits a reply. I shall be very much obliged if you will kindly let me know if the Railway Administration, under such circumstances, is legally bound to survey the damaged goods in spite of the booking conditions or is at liberty to dispose of the goods without a survey. As such cases very frequently happen, I solicit your early opinion on the matter.

Yours faithfully,

Traffic Manager.

Tpr.

Appendix F G—1]

SUBJECT .....

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Section Law

File No. 53-31.

Serial No. 2

Diary No. of letter replied to .....

No. 1775

To The Traffic Manager
Mys. Rys.

General and Revenue Secretariat

( )

the *193* .

Sir

Date of issue 24/9/31

With reference to your letter no. C. T. 587/31 dated 8th Sept 1931 ~~Soliciting legal opinion~~ re: Invr. no. 10 of 7.8.31 Ex. Byculla to Mysore - 126 bags wheat flour, I am directed to request that the entire records ~~Connected with the Case~~ Containing the notes connected with the case may kindly be sent so that the exact facts may be ascertained and legal opinion given thereon.

Signed by Mr Ray

List of enclosures .....

Copied by .....

Examined by .....

I have etc

for Secretary

WD 71—GBPM—40,000—20-7-31.

JSD

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 23rd September 1931.

No.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Traffic Manager,
Mysore Railways, M y s o r e.

Sir,

With reference to your letter No.C.F.551/31 dated 8th September 1931, re: Inv.No.10 of 7th August 1931 Ex-Byculla to Mysore - 126 bags of wheat flour, I am directed to request that the entire records containing the risk notes connected with the case may kindly be sent so that the exact facts may be ascertained and legal opinion given thereon.

I have the honour to be,

S i r,

Your most obedient servant,

For General Secretary to Government.

K.M.R.2.
23/9.

BY REGISTERED POST AND ACKNOWLEDGMENT DUE.

MYSORE RAILWAYS

14236/P 0/3

Tel. Address "TRANSFER"

All communications should be addressed by TITLE and not by NAME

TRAFFIC MANAGER'S OFFICE,

Mysore, ...26th September..... *19* 31

No.....C.F. 551/31.

Law 53-31-8

To

The General Secretary
to the Government of His Highness
the Maharaja of Mysore,
"Law Section" General & Revenue
Secretariat, Bangalore.

GENERAL SECRETARY. 29 SEP 1931 No.

Dear Sir,

Your letter No. P. 1773 Law 53.31-2 of 24th September 1931.

I beg to send you herewith this office file of papers containing 20 pages for your information as desired. Kindly let me have the legal opinion on the matter.

Yours faithfully,

Traffic Manager.

Tpr. (Encs. 1 file of 20 pages)

Appendix F G—1]

SUBJECT .....

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Section Indoor

File No. 53-31

Serial No. (4)

Diary No. of letter replied to ..... No. 1913 Secl

To The Traffic Manager

Mys. Rys. Mysore.

eneral and Revenue Secretariat

( )

the *193* .

Sir,

Date of issue 3/10/31

With reference to the Correspondence ending with your letter no. C.T. 551/31 dated 26th Sept 1931 re: Inv. No: 10 of 7-8-1931 Ex. Byculla to Mysore I am directed to state that under the Circumstances mentioned in your letter of the ~~aforesaid enquiry letter dated~~ 8th Sept 1931, ~~8th Sept 1931~~, the Railway administration is not bound to Survey the bags and asses the damage at the instance of the Consignee as prayed for by him in his letter dated 27th Aug 1931

Signed by M Nrj

forward herewith copy of the legal opinion in the matter and to

List of enclosures .....

Copied by .....

Examined by .....

6

Action may be taken under section 40 of the Railway Regs, if after due notice delivery is not taken by the party. Records sent with your letter are herewith returned.

I have the

JSD
3/10.

DRP
3/10.

Gen Secy

7

3rd October 1931.

H.V. Ramaswami, Esq., M.A., B.L.,

The Traffic Manager,
Mysore Railways, M y s o r e.

With reference to the correspondence ending with your letter No.C.F.551/31 dated 26th September 1931, regarding Invoice No.10 of 7th August 1931 Ex. Byculla to Mysore, I am directed to forward herewith copy of the legal opinion in the matter and to state that under the circumstances mentioned in your letter of the 8th September 1931, the Railway Administration is not bound to survey the bags and assess the damages at the instance of the Consignee as prayed for by him in his letter dated 27th August 1931.

Action may be taken under Section 40 of the Railway Regulation, if after due notice delivery is not taken by the party. Records sent with your letter are herewith returned.

I have the honour to be,

S i r,

Your most obedient servant,

For General Secretary to Government.

K.M.R.2.
3/10.